

May 19, 2006

Bill Moore
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Subject Comments on Public Review Draft Phase 1 NPDES Municipal
Stormwater Permit Dated February 15, 2006

Dear Mr. Moore

Thank you for the opportunity to comment on the public review draft NPDES municipal stormwater permit issued on February 15, 2006. We appreciate the time and effort you have made in numerous venues to discuss the permit with our staff.

The following pages contain detailed comments on the permit, including the appendices and other documents referenced as permit conditions such as the 2005 Ecology Stormwater Manual.

If you would like to discuss our comments further, please contact Bill Leif at (425) 388-3148.

Sincerely,

Mark Soine
Deputy Executive

cc: Steven Thomsen, Director, Department of Public Works
Craig Ladiser, Director, Department of Planning and Development Services
Joan M. Lee, P.E., Director, Public Works Surface Water Management Division
Bill Leif, P.E., Supervisor, PW/SWM Water and Habitat Sciences Section

S1 - Permit Coverage and Permittees

COMMENT # 1

Revise Section S1 to say that a Phase 1 permit for a Phase 1 county applies to the unincorporated area within that county plus all facilities owned or operated by the county that area located within the coverage area of other NPDES municipal stormwater permittees.

Justification: Section S1A of the permit defines the permit coverage area so as to exclude facilities owned by a Phase 1 permittee that are located inside another municipality, for example, a maintenance facility of a county that is located within an incorporated city. However, at the April 10 meeting with Phase 1 permittees and Ecology, Ecology staff said that Phase 1 permittees with such facilities would need to obtain coverage as Secondary Permittees for these facilities (secondary to the 'primary' permittee). We think that this would simply add bureaucracy for both permittees and Ecology.

S4 – Compliance with Standards.

COMMENT # 2

Revise S4.E as follows:

“S4.E Full implementation of applicable Stormwater Management Program elements described in Special Conditions S5 and S6, applicable TMDL requirements described in Special Condition S7, and applicable monitoring requirements described in S8 satisfies the requirements of S4.C and S4.D.”

Justification: Compliance with the SWMP should constitute compliance with the permit. The permit should state clearly the actions needed to comply. These actions are set forth in the sections named above.

S5 – Stormwater Management Program

COMMENT #3

Delete the cost instructions in Appendix A3, and replace the language in S5A2 with the following language

“S5.A.2: Each permittee shall track the estimated cost of development and implementation of the SWMP required by this section, and report this information in the

annual report. Cost estimates may be based on actual expenditure data, or on surrogate parameters such as engineer's cost estimates for permit-related elements of construction projects, or similar estimates based on documentable information and commonly-accepted professional practices. In the event that estimates of expenditures are used, the permittee shall describe the estimation method and the documentation used as a basis."

Justification: The methods for tracking costs in Appendix A3 as referenced in S5A2 are far too complicated will not lead to useful cost comparisons. The methods must be robust, simple, and lead to documentable estimates.

S5C3 – Coordination

COMMENT # 4

Delete S5C3(b)(i), which requires written County-internal agreements.

Justification: Such internal agreements have no legal weight, add nothing to other outcomes required under the permit, and add internal bureaucracy.

COMMENT # 5

Change the language in S5C3(b)(ii) to state clearly that the responsibility of each permittee is to make reasonable attempts to coordinate such things, and does not limit the authority of a municipality to make decisions for which it has unilateral authority and responsibility.

Justification: The intergovernmental coordination proposed in S5C3(b)(ii) implies a shared liability among permittees and a responsibility of one permittee to cause another to comply with that permittee's permit. Snohomish County has repeatedly stated that each permittee's responsibility and liability should extend over its own actions and not over the actions of other permittees.

COMMENT # 6

Delete the third bullet in S5C3(b)(ii) regarding an integrated monitoring program.

Justification: There is no independent requirement to have an integrated monitoring program, Snohomish County has opposed such a requirement, and the permit should not require coordination to develop something that is not required by the permit.

S5C5 – Controlling Runoff from New Development, Redevelopment, and Construction Sites

COMMENT # 7

The development codes required under this section must either allow a permittee to disallow certain stormwater controls that are in the Ecology Stormwater Manual and the LID Manual, or absolve the permittee of the requirement to ensure proper function through inspection, maintenance, or enforcement means. See also the related comment on section S5C9 below.

Justification: Some “Low Impact Development” stormwater management facilities pose a problem from the perspective of a municipality’s ability to ensure long-term performance, specifically those that would be built on a single-family residential property. An example is a vegetated roof. Ostensibly, a municipality would allow a developer to reduce the volume of a standard detention pond by using these in a development. However, the only way a municipality could ensure long-term performance would be to have legal right of entry for the purpose of inspection, maintenance, and repair. This is typically accomplished through an easement on the property established as a plat condition. It is hard to imagine enforcing the hydrologic functions of single-family vegetated roofs via such an easement.

COMMENT # 8

Change S5C5(b)(iv)(1) to allow submittal of draft codes and other documents for Ecology review within 12 months of the effective date of the permit.

Justification: Section S5C5(b)(iv) requires adoption of codes by 12 months from the effective date of the permit. This is a very large undertaking, and the same effort for the existing permit required more than one year of very intensive work by County staff, plus intensive discussions with Ecology staff. Also, since these codes are land use codes, they must be adopted in accordance with procedures set forth in the State Growth Management Act, which will add significant process.

S5C6 – Structural Stormwater Controls

COMMENT # 9

Replace the second paragraph of S5C6(a) with the following paragraph.

“The program shall consider the construction of projects such as: regional flow control facilities, water quality treatment facilities, and retrofitting of existing stormwater

facilities, rights-of-way, or other properties to provide additional water quality and flow control benefits. Permittees may consider habitat acquisition, restoration of forest cover and riparian buffers, and in-stream culvert replacement projects for compliance with this requirement if there is a demonstrable hydrologic or water quality benefit.”

Justification: S5C6(a) states that permittees should consider habitat acquisition or restoration of forest cover and riparian buffers in this program. This language is vague, since it implies but does not clearly require such consideration. We think that permittees should be allowed to include such actions in the program provided that there are demonstrable water quality benefits, but should not be required to do so, or to justify why they do not, as could be inferred by the current language. This paragraph also categorically excludes in-stream culvert replacement projects from consideration in the program. Such projects should be eligible for inclusion if there is some demonstrable water quality or flow control benefit derived, such as stabilization of an eroding stream bank that is contributing to violations of turbidity standards occurring during stormflows affected by municipal stormwater discharges.

COMMENT # 10

Delete the sentence in S5C6(b)(iii) that requires information on planned monitoring or evaluation of individual projects, and the results of such evaluation or monitoring.

Justification: Section S5C6(b)(iii) requires information on planned monitoring or evaluation of individual projects, and the results of such evaluation or monitoring. This language is ambiguous, since it does not clearly state that monitoring is required, but could be inferred to mean this. There is a separate monitoring section in the permit and any monitoring requirements should be contained therein.

S5C7 – Source Control Program for Existing Development

COMMENT # 11

In the 2005 Ecology Stormwater Manual, remove the designation “operational” from any BMPs that require construction or physical site alterations.

Justification: Many of the “operational” BMPs would in fact involve construction or some permanent physical alteration of the site. For example, “installation of engineered soil/landscape systems” is listed as an operational BMP for Landscaping and Lawn/Vegetation Management. Operational BMPs should not include such things.

COMMENT # 12

Change S5C7(a)(i) to read as follows:

“S5C7(a)(i) Requiring application of operational and structural source control BMPs, and, if necessary, treatment BMPs to pollution generating sources associated with existing land uses and activities at properties zoned for commercial, industrial, and multifamily residential purposes.”

Justification: The permit does not define the terms “commercial,” “industrial,” or “multifamily.” Some of the activities described in the Ecology Manual to which BMPs apply could take place legally at virtually any property in the County, not just in areas zoned for commercial or industrial activity. As written, this would place the permittee in the position of needing to determine whether some kind of commerce was occurring at a property in order to determine whether the code applied. Potentially, the driveway of a home-based business would be classified as a commercial parking lot, and would thus require sweeping. This seems unmanageable, and we hope it is not what Ecology intended.

COMMENT # 13

Change the fifth sentence (“Structural source control BMPs shall be required...”) of the last paragraph of S5C7(b)(i) to read as follows:

“Structural source control BMPs shall be required for pollutant generating sources if operational source control BMPs do not prevent illicit discharges or violations of surface water, ground water, or sediment management standards.”

Justification: The permit does not clearly state how a suite of operational BMPs will be determined to be inadequate, or by whom. One could infer that the permit requires the permittee to either monitor stormwater at all sites to which the code applies, or require such monitoring. We believe that this interpretation is not a reasonable code requirement, but the language does not rule out such an interpretation.

COMMENT # 14

Delete the first sentence of S5C7(b)(iv)(4).

Justification: This sentence states that a permittee may refer violations of local ordinances to Ecology provided that the permittee makes a “good faith effort” of progressive enforcement. We object to this for two reasons. First, there is no clear

definition of a “good faith effort.” Second, the language may be interpreted to imply that a referral by a permittee without a “good faith effort” constitutes a permit violation in and of itself, which is invalid.

S5C8 – Illicit Connections and Illicit Discharges Detection and Elimination

COMMENT # 15

Delete the second bullet and fourth bullet of S5C8(b)(ii)(2), pertaining to discharges from lawn watering and other landscape irrigation runoff, street and sidewalk wash water, water used to control dust, and routine external building wash water.

Justification: The inclusion of residential lawn watering and landscape irrigation flows in this section stretches the credulity of the permit. If the concern is pollutants in these discharges, other permit sections address the concern. If Ecology’s concern is simply flow, we maintain that there is no clear evidence that such discharges cause flow problems, as most of these flows occur in dry weather. In any event, it would be extremely burdensome for a permittee to verify that such discharges had been reduced in volume.

COMMENT # 16

Change S5C8(b)(vi) to read as follows:

“S5C8(b)(vi) Each Permittee shall conduct on-going screening to detect illicit connections using the methods identified in Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments, Center for Watershed Protection, October 2004, or the outfall screening methods and level of effort currently employed under a Phase 1 Municipal Stormwater Management Program approved by Ecology. If the permittee elects to use the Center for Watershed Protection document as a basis for its program, the following requirements apply

(1) Each City covered under this permit shall complete an Outfall Reconnaissance Inventory for each stream and shoreline within the Permittee’s incorporated area 180 days prior to expiration of the permit.

(2) Each County covered under this permit shall prioritize streams and shorelines in urban/higher density rural subbasins for screening and shall complete an Outfall Reconnaissance Inventory for at least half of streams and shorelines in these areas 180 days prior to expiration of this permit.”

Justification: S5C8(b)(vi) requires an outfall screening program based on Illicit Discharge Detection and Elimination; a Guidance Manual for Program Development and Technical Assessments (Center for Watershed Protection, 2004). This section also requires permitted counties to “prioritize streams and shorelines in urban/higher density rural subbasins for screening and shall complete an Outfall Reconnaissance Inventory for at least half of streams and shorelines in these areas 180 days prior to expiration of this permit.” This is misguided. First, the permit defines “outfall” as the point where a municipal separate storm sewer discharges to waters of the state. By this definition, most of Snohomish County’s outfalls are located where stormwater from a County road right-of-way flows onto private property. Thus, we do not need to walk streams and shorelines to determine outfall locations. Second, the dry-weather field screening method currently employed by the County is based on EPA methodology, and is very effective at locating illicit connections and discharges. Finally, Ecology staff have stated that the permit must explicitly specify the process and documentation for this program, and cannot contain language such as “or an equivalent method approved by Ecology.” The language above allows the use of highly effective existing programs that have been developed in the last decade by Phase 1 municipalities in the region.

COMMENT # 17

Delete the requirement in S5C8(b)(vii)(1) that the permittee must determine the volume of an illicit discharge.

Justification: Such a determination would require flow monitoring for discharges that the permittee does not know about, and thus cannot be expected to monitor.

COMMENT # 18

Revise S5C8(b)(viii) to read as follows:

S5C8(b)(viii) No later than 6 months after the effective date of this permit, each Permittee shall develop and implement procedures to prevent, respond to and clean up spills and improper disposal into municipal separate storm sewers owned or operated by the Permittee, or to provide appropriate assistance to other agencies (such as local and state emergency response agencies) that are responsible for this work. The procedures will include a program designed to:

(1) investigate, within 7 days on average, any complaints/reports or monitoring information that indicates a potential illicit discharge, including a spill or illegal dumping, and

(2) immediately respond to problems/violations judged by the permittee to be urgent or severe, or to report these problems and violations to the appropriate response agencies and provide appropriate assistance to these agencies.

Justification: Snohomish County does not operate a fire department or other department trained in hazardous materials or spill response, but rather participates with other municipalities in a Countywide emergency response network. The permit language as written would require the County to be the emergency response agency.

S5C9 – Operation and Maintenance Program

COMMENT # 19

Change the last sentence of S5C9(b)(i) to read as follows:

“These standards are violated when an inspection identifies a required maintenance action related to facility function, and that action is not performed within 12 months for typical maintenance, and within 2 years for maintenance that requires capital construction of less than \$25,000.”

Justification: S5C9(b)(i) declares a permit violation if “typical” maintenance related to facility function is not performed within 6 months of noting the need in an inspection. This interval does not allow adequate timing between winter or spring inspections and summer or fall maintenance work, and may conflict with permitting requirements such as HPAs that may require delayed maintenance until mid-June or July. In addition, it is likely to take more than 6 months to get some of the property owners to maintain their facilities.

COMMENT # 20

Change S5C9(b)(ii)(1) to read as follows:

No later than 1 year after the effective date of this permit, each Permittee shall evaluate and, if necessary, update existing ordinances or other enforceable documents requiring maintenance of all permanent stormwater treatment and flow control facilities regulated by the Permittee in accordance with maintenance standards established under S5.C.9.b.i, above, to the extent allowed under state and federal law.

Justification: S5C9(b)(ii)(1) requires the permittee to require in turn the maintenance of “all permanent stormwater treatment and flow control facilities (including catch basins)” on private properties that drain to the permittee’s MS4. This is an unreasonable and

vague requirement. First, in many cases the permittee has no legal method to enter the properties where these catch basins exist in order to inspect them, and cannot create the authority. Second, catch basins are not considered stormwater treatment or flow control facilities.

COMMENT # 21

Change S5C9(b)(ii)(2) and (3) to limit the discussed private facility inspection and management program to those facilities for which the permittee can legally enter the property for inspection and maintenance.

Justification: Sections S5C9(b)(ii)(2) and (3) set forth requirements for an inspection program for all private facilities that discharge stormwater to the County's MS4. Again, such a program must be limited to those facilities for which the County may legally enter such property to inspect the facilities.

COMMENT # 22

Change S5C9(b)(ii) to apply only to systems that were designed and built to the standards in the 1992 Ecology Stormwater Manual.

Justification: The program set forth in S5C9(b)(ii) applies to systems that were designed and built to standards that predate the 1992 Ecology Stormwater Manual. Many of these systems do not provide significant flow control or water quality treatment benefit. We think that spending time inspecting and maintaining these systems according to the frequency in the permit is not the best use of money.

COMMENT # 23

Revise S5C9(b)(ii) to include only LID systems that are in rights-of-way of the permittee or built in separate tracts with easements granted to the permittee for inspection, repair, and maintenance.

Justification: The program set forth in S5C9(b)(ii) would include "LID" stormwater systems. While Snohomish County is a strong supporter of such systems, many of them pose a problem from the standpoint of legal authority for inspection and maintenance in the context of this permit. See comments on S5C5 above.

COMMENT # 24

Change S5C9(b)(iv)(1) to read as follows:

S5C9(b)(iv)(1): No later than 24 months after the effective date of this permit each Permittee shall begin implementing a program within urban and higher density rural subbasins to annually inspect catchbasins and inlets owned or operated by the Permittee in sections of the MS4 where there is no downstream detention or treatment system before the stormwater is discharged to a receiving water, or in other specific cases where the catch basins play an important pollution removal role. The Permittee shall use the storm sewer maps created in accordance with S5C2 to determine these areas.

- Inspections may be conducted on a “circuit basis” whereby a sampling of catchbasins and inlets within each circuit is inspected to identify maintenance needs. Include in the sampling an inspection of the catchbasin immediately upstream of any system outfall. Clean all catchbasins within a given circuit at one time if the inspection sampling indicates cleaning is needed to comply with maintenance standards established under S5.C.9.b.i, above.*
- As an alternative to inspecting catchbasins on a “circuit basis,” the Permittee may inspect all catchbasins, and clean only catchbasins where cleaning is needed to comply with maintenance standards.*

Justification: S5C9(b)(iv) requires catch basin inspection and maintenance. Ecology’s stated intent with this requirement is pollution prevention. We assert that, in many cases, catch basin maintenance would not provide any significant additional pollution removal. For example, catch basins upstream of a detention pond / treatment system built to the 1992 standards would not remove pollutants in addition to the detention / treatment system. Cleaning these catch basins may merely extend the maintenance cycle of the system. Further, in some cases, cleaning catch basins and clogged pipes that may have been clogged for years or decades may actually cause flooding or water quality problems downstream. Finally, in areas outside UGAs there are many catch basins that simply provide the role of connecting two pipes in systems predominantly composed of open channels. We think that inspecting and cleaning such catch basins is of basically no use in pollution prevention. We think that catch basin cleaning for pollution removal will be most important in sections of the storm sewer where there is no downstream detention or treatment system before the stormwater is discharged to a receiving water, or in other specific cases where the catch basins play an important pollution removal role.

S5C10 – Education and Outreach Program

COMMENT # 25

Delete the first paragraph of S5C10(b)(ii), and include paragraphs S5C10(b)(ii)(1)-(8) under S5C10(b)(i). Renumber the subsequent paragraphs accordingly.

Justification: S5C10(b)(ii) requires that the education program “shall increase regular adoption of the following behaviors in the following target audiences by the expiration date of this permit...” This is an unreasonable and inappropriate requirement. The permittee has no direct control over what people do, and permit compliance cannot be based on things wholly outside of the permittee’s control.

S7 - Total Maximum Daily Loads

COMMENT # 26

A single QAPP should be required for all monitoring under the permit. The submittal deadline should be one year as set forth in Section S8.

Justification: Requiring multiple QAPPs with multiple deadlines is an unnecessary expense of effort for permittees and will inundate Ecology with separate documents to review. We cannot believe that Ecology will be able to review all of the QAPPs required from all of the Phase 1 permittees in a timely manner.

COMMENT # 27

The Baseline Requirements sections of the TMDLs for Snohomish River Tributaries and North Creek should contain a definition of the term “commercial” as it applies to properties and facilities governed by the TMDL. The definition must be an attribute of the property or activity that does not change frequently and can be readily determined by the permittee.

Justification: The current language is vague. Many properties outside areas zoned for commercial activity may or may not collect money for “animal handling activities” and it may be infeasible for the County to determine whether any money changes hands.

COMMENT # 28

In Appendix 2, for the Snohomish Tributaries and North Creek TMDLs, change the section titled “Area where TMDL Requirements Apply” so that the requirements apply only to the stream segment upon which the TMDL documents the violations.

Justification: If there are not data to support a pollution contribution from an upstream tributary, the tributary should not be included in the TMDL requirements under this permit.

COMMENT # 29

In Appendix 2, the first sentence, second paragraph of the Baseline Requirements sections of the TMDLs for Snohomish River Tributaries and North Creek should be changed to read as follows:

“Operational source control BMPs shall be required at the facilities listed above, in accordance with the permittee’s source control ordinance required under Section S5C7 of the Phase 1 municipal stormwater discharge permit.”

Justification: As written, the text is ambiguous, and could be interpreted to apply to any pollution generating surface at any “facility” in the watershed. We assume that this was not Ecology’s intent.

S8 Monitoring

COMMENT # 30

Revise Section S8A to require analysis only for TSS, TPH, dissolved copper, dissolved phosphorus, and hardness.

Justification: S8A requires monitoring of stormwater for a wide variety of parameters. **Our estimate for the laboratory costs alone for the stormwater sample analysis in S8A is over \$117,000 PER YEAR, based on our current laboratory contract.** We believe that the stormwater characterization and loading estimates should be performed for a few representative parameters that can (1) be related to required actions and programs in the permit, and (2) related to BMP selection in the Ecology Stormwater Manual. The parameters used in the Stormwater Manual BMP selection process are TSS, TPH, certain dissolved metals, and nutrients. These parameters are also controllable by actions required in the permit. We believe that these parameters should compose the suite of required analytes in Section S8A.

COMMENT # 31

Delete Section S8C.

Justification: Section S8C requires assessment of stormwater treatment and flow control BMPs. We believe that this monitoring is outside the scope an appropriate permit requirement, because such assessment is the responsibility of the state.

COMMENT # 32

Revise Section S8F to state that the annual monitoring report will be submitted as part of the annual report described in Section S9.

Justification: Preparation of multiple reports is an unnecessary effort for the permittee with no added value to the permittee or Ecology.